person from whom the money is obtained would have been unlawful if the representations of the defendant had been true?" In answering the question in the affirmative the Ohio court adopts the view of a majority of the states where it has been passed upon. *People* v. *Martin,* 102 Cal. 558; *In re Cummins,* 16 Colo. 451; *Gilmore* v. *People,* 87 Ill. App. 128; *Casily* v. *State,* 32 Ind. 62; *Commonwealth* v. *O'Brien,* 172 Mass. 248; *Peope* v. *Watson,* 75 Mich. 582; *Cunningham* v. *State,* 61 N. J. L. 67; *Commonwealth* v. *Henry, 22* Pa. St. 253; *Lovell* v. *State,* 48 Tex. Crim. 85. The reason of the rule is that the action is criminal in its nature and not one between parties. While in the latter cases the court will leave both litigants where it finds them, in the former public justice alone is concerned and "so far as the public is interested one party cannot excuse or defend his criminal conduct because the other is equally guilty with him." *Cunningham* v. *State, supra.* This view was taken by the English courts in *Regina* v. *Hudson,* 8 Cox C. C. 305; and prevails in Canada, *Regina* v. *Ewing,* 21 U. C. Q. B. 523, 533. New York and Wisconsin, however, have adhered to a contrary doctrine. In 1871 *McCord* v. *People,* 46 N. Y. 470, became authority for the proposition that a plea of "unlawful transaction" was a good defense to an indictment for obtaining money under false pretenses. The court says, "Neither the law nor public policy designs the protection of rogues in their dealings with each other, or to enforce fair dealing and truthfulness as between each other in their dishonest practices. The design of the law is to protect those who for some honest purpose are induced, upon false and fraudulent representations, to give credit or part with their property to another, and not to protect those who for unworthy or illegal purposes part with their goods. The *McCord case* has been followed ever since in New York, though it would seem, as pointed out in *Cunningham* v. *State, supra,* that the New York court had failed to observe the distinction which exists between suits *inter partes* and indictments for a breach of the criminal law. In *People* v. *Tompkins* (1905), 186 N. Y. 413, 12 L. R. A. (N. S.) 1081, the *McCord* case is followed, but unwillingly, and a strong recommendation is made that a change be effected through legislative enactment. Wisconsin follows New York in *State* v. *Crowley,* 41 Wis. 271. It is doubtful if a doctrine founded upon so apparent a fallacy will gain recognition in other jurisdictions. However, a dissenting opinion in the principal case contends for application of the New York rule.

HUSBAND AND WIFE—SUPPORT OF SELF AND INFANT CHILDREN—ACTION BY WIFE AGAINST HUSBAND.—Plaintiff, abandoned by her husband, was compelled to expend moneys out of her separate estate to provide necessaries for herself and her three infant children. Her separate estate consisted, in part, of the proceeds of manual labor and, in part, of a small sum left her by a deceased relative. She sues her husband to recover the moneys so expended. *Held,* that she is entitled to recover. *DeBrauwere* v. *DeBrauwere* (N. Y. 1911), 96 N. E. 722.

When this case was tried at the Special Term (*DeBrauwere* v. *DeBrauwere,* 69 Misc. Rep. 472, 126 N. Y. Supp. 221) the decision was the same as that of the higher court in the principal case but there it was reached on the

theory that the wife was subrogated to the rights of the tradesmen who had furnished the necessaries. There seemed no precedent in the books for such a decision and but little justification on reason. See 9 MICH. L. REV. 441. Here the court rejects the subrogation doctrine and places its decision on the husband's duty to support his wife and children, and the removal of the wife's Common Law disability to hold separate property and to sue. This ground, though better supported by reason, seems almost equally lacking in justification from the reports. The court's first premise, that if a parent neglects to furnish necessaries for his infant children, any other person furnishing them may recover their price from the father on an implied promise to pay, may be taken as established law, although a respectable group of authorities holds to the contrary. The courts have, however, denied this right of recovery to the *wife,* where she had been awarded the custody of the child in a divorce proceeding, *Husband* v. *Husband,* 67 Ind. 583, 33 Am. Rep. 107; where it is directed by State statutes that both parents are to support the children, *Johnson* v. *Barnes,* 69 Ia. 641, 29 N. W. 759; and where there existed no express promise to reimburse, *Lapworth* v. *Leach,* 79 Mich. 16, 44 N. W. 338. *Alvey* v. *Hartwig,* 106 Md. 254, 67 Atl. 132, 11 L. R. A. (N. S.) 678 is the only discoverable case which allows the wife a recovery and the court there goes farther than in our principal case; although custody of the children had been awarded the wife in a divorce proceeding, it was held that the husband's responsibility is primary, and that a wife who has expended money for the support of their children can compel him to reimburse her. The New York court's second premise, that one who has advanced money to a deserted wife for the purchase of necessaries, may recover in equity from the husband, is also established law but there is not discoverable a single case allowing the right of recovery in such a case, to the *wife* herself. In the principal case the court does not attempt to cite case authority for its conclusion but argues that, the husband being unquestionably under obligation to provide necessaries suitable to their condition, for his wife and children, this obligation would have been enforceable at Common Law except for the wife's disability to sue. This disability having been removed, the court concludes that the wife may now recover.

INTOXICATING LIQUORS—REGULATION—PROHIBITION—POLICE POWER.—Suit for breach of contract to buy "Poinsetta" from plaintiffs. Defense that the beverage was prohibited by law from being sold. "Poinsetta" is sold as a beverage, is composed of 90.45 per cent distilled water, 9.55 per cent of solids derived from cereals, is unfermented and non-intoxicating, has not the appearance, taste, or odor of intoxicating liquor, cannot be employed as a subterfuge, contains no alcohol, preservatives or saccharine, but does contain 5.73 percent malt. MISS., ACTS OF 1908, § 1, p. 116, prohibits the sale of any vinous, alcoholic, malt, intoxicating, or spirituous liquors. *Held,* the Act of 1908, in so far as it prohibits the sale of non-intoxicating malt liquors, is not unconstitutional as beyond the police power and that "Poinsetta" being a "malt" liquor, its sale was prohibited. *Purity Extract & Tonic Co.* v. *Lynch* (Miss., 1911), 56 South. 316.